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VIA EMAIL & ECF

Honorable William H. Pauley III
U.S. District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 2210
New York, NY 10007

Re: Capitol Records, LLC et al. v. MP3tunes, LLC, Case No. 07 Civ. 9931 (WHP)

Dear Judge Pauley:

Mr. Sacks' most recent letter stems from a miscommunication and does not require any rulings by the Court. Plaintiffs' primary concern about waiving the right to call Mr. Massarsky was the possibility that Mr. Robertson would address the subject of Ms. Stamm's report in his direct testimony. After sending his letter to the Court, Mr. Sacks confirmed that he would not question Mr. Robertson on that subject. Accordingly, we will not call Mr. Massarsky.

On a related scheduling issue, the parties have agreed that, without waiving either party's position on the issue, if Your Honor overrules Mr. Sacks' objection to Plaintiffs calling Mr. Pandiscia on their damages case, that, subject to the approval of the Court, Plaintiffs will call Mr. Pandiscia first thing Monday morning before resuming their questioning of Mr. Robertson.

Respectfully submitted,

/s/ Andrew H. Bart
Andrew H. Bart

cc: Counsel for Robertson (via email)
Counsel for Publisher Plaintiffs (via email)